

1 MR. SCHAUBLE: Yes, Your Honor, in the same para-  
2 graph going up to page 4, I object to the sentence, "Other  
3 stations seem to emphasize the division and tensions between  
4 racial and ethnic groups. WHFT --"

5 JUDGE CHACHKIN: Where is that? What station --  
6 what paragraph is that?

7 MR. SCHAUBLE: It's part of paragraph 6 that carries  
8 over to page 4.

9 JUDGE CHACHKIN: Yes.

10 MR. SCHAUBLE: I object to the sentence, "Other  
11 stations seem to emphasize the division and tensions between  
12 racial and ethnic groups. WHFT tries to bring them together."  
13 This witness is not -- this exhibit does not show that the  
14 witness is competent, one, to make an opinion as to the other  
15 stations' programming or, two, to make general statements  
16 about WHFT's programming.

17 JUDGE CHACHKIN: The objection is -- the, the state-  
18 ments, or the portions of the paragraph, are rejected on the  
19 grounds you just cited.

20 MR. SCHAUBLE: And, finally, Your Honor, I object to  
21 paragraph 7 where the witness states a, an opinion to the  
22 station's reputation with no basis.

23 JUDGE CHACHKIN: The objection is sustained.

24 MR. SCHAUBLE: No further objections, Your Honor.

25 JUDGE CHACHKIN: All right, TBF Exhibit 23 is

1 received except as noted.

2 (Whereupon, the exhibit marked for  
3 identification as TBF Exhibit 23 was  
4 received into evidence.)

5 MR. EMMONS: TBF next offers TBF Exhibit 24, the  
6 declaration of Lonnie Lee Tolbert.

7 JUDGE CHACHKIN: Any objections to Exhibit 24?

8 MR. SCHAUBLE: Yes, Your Honor, on page 2, para-  
9 graph 5.

10 JUDGE CHACHKIN: Yes?

11 MR. SCHAUBLE: On the -- I object to the first  
12 two -- I object to the entire paragraph. I specifically  
13 object to the first two sentences on the basis that this a  
14 general opinion for which an insufficient basis, basis has  
15 been provided. The fact that the witness is a regular viewer  
16 again says little or nothing about how, how frequently or how  
17 regularly the witness, the witness has viewed the program.  
18 Now, in the remainder of the paragraph, while the witness  
19 discusses some episodes of "Praise the Lord -- South Florida"  
20 and talks about various issues that were discussed, specific  
21 programs and the dates those programs aired are not provided,  
22 and therefore there is not enough information to make those --  
23 a valid finding on.

24 JUDGE CHACHKIN: Paragraph 5 is rejected for the  
25 reasons noted. Any other objection?

1 MR. SCHAUBLE: Your Honor, paragraph 6, the second  
2 sentence concerning the prayer line, I object to for the  
3 reasons previously stated.

4 JUDGE CHACHKIN: Overruled.

5 MR. SCHAUBLE: No further objections.

6 JUDGE CHACHKIN: TBF Exhibit 24 is received except  
7 as noted.

8 (Whereupon, the exhibit marked for  
9 identification as TBF Exhibit 24 was  
10 received into evidence.)

11 MR. EMMONS: TBF, Your Honor, next offers TBF  
12 Exhibit 25, the declaration of David Vega.

13 JUDGE CHACHKIN: Any objections?

14 MR. SCHAUBLE: Yes, Your Honor, on page 3, para-  
15 graph 6, I object to -- for the -- the prayer line for the  
16 reasons previously stated.

17 JUDGE CHACHKIN: Overruled.

18 MR. SCHAUBLE: Paragraph 7, I object to the, I  
19 object to the second sentence on the basis the witness states  
20 she has "not seen a program on another area TV station which  
21 treated the problems of drug and alcohol addiction as well as  
22 the program on which I appeared on Channel 45" on the basis  
23 that there's no, no basis for knowing whether this witness  
24 watched any other television stations at all, so no conclusion  
25 could be drawn about Channel 45's programming vis-a-vis other

1 television stations.

2 JUDGE CHACHKIN: I'm not going to receive any of  
3 paragraph 7.

4 MR. SCHAUBLE: Okay.

5 JUDGE CHACHKIN: Any other objections?

6 MR. SCHAUBLE: I object to paragraph 8 on the basis  
7 concerning the "Praise the Lord" program, but again the only  
8 statement as to the witness's competence is, is that the  
9 program is watched on a regular basis. There's no, there's no  
10 competent evidence in the record as to what programs were  
11 watched or how often.

12 JUDGE CHACHKIN: Paragraph 8 is rejected.

13 MR. SCHAUBLE: And, finally, paragraph 9 concerning  
14 children's programming --

15 JUDGE CHACHKIN: Paragraph 9 is rejected, too.  
16 We're not going to make qualitative evaluations of the sta-  
17 tion's program as opposed to other stations.

18 MR. SCHAUBLE: And finally, Your Honor, I object to  
19 paragraph 10 on the basis of, of relevance and competence;  
20 again, general conclusionary statements are being made here.

21 JUDGE CHACHKIN: Paragraph 10 is rejected. TBF  
22 Exhibit 25 is received except as noted.

23 (Whereupon, the exhibit marked for  
24 identification as TBF Exhibit 25 was  
25 received into evidence.)

1 MR. EMMONS: Next, Your Honor, TBF offers TBF  
2 Exhibit 26, the declaration of Barbara L. Wade.

3 JUDGE CHACHKIN: Any objections?

4 MR. SCHAUBLE: Yes, Your Honor, page 2, paragraph 4,  
5 from the first two sentences of the paragraph, I object to on  
6 the basis of hearsay.

7 JUDGE CHACHKIN: Overruled.

8 MR. SCHAUBLE: Page 3, I object to the sentence  
9 about two-thirds of the way down the page, "The station subse-  
10 quently followed up by contacting me from time to time to  
11 discuss my activities with Positive, Inc., and the street gang  
12 situation generally." Here, with this program, or the program  
13 in question, took place in June of 1991 near the end of the  
14 renewal period. I believe an insufficient basis has been  
15 shown that this relates to matters that took place during the  
16 renewal period.

17 MR. EMMONS: Your Honor, back in paragraph 1, the  
18 first page, the witness has made clear at the end of that  
19 paragraph that she is referring to matters occurring between  
20 May 1991 through December 1991. So that qualifies all of her  
21 testimony in this case.

22 JUDGE CHACHKIN: Go --

23 MR. SCHAUBLE: Your Honor, that --

24 JUDGE CHACHKIN: Go ahead.

25 MR. SCHAUBLE: That is contained in paragraph 1, but

1 here we talk about "from time to time." I think there's  
2 certainly substantial question as to whether the witness is,  
3 at least in this part of her testimony, is going beyond that  
4 or that it took place beyond the end of the renewal expectancy  
5 period.

6 JUDGE CHACHKIN: Objection is overruled. I should  
7 note that as far as I know, none of these witnesses were  
8 called for cross-examination or deposed. Any other objec-  
9 tions?

10 MR. SCHAUBLE: Yes, Your Honor, I object to the last  
11 sentence in paragraph 3, on --

12 MR. EMMONS: Paragraph 3?

13 MR. SCHAUBLE: "I was especially impressed by the  
14 fact that WHFT's interest in Positive, Inc. and the problem of  
15 organized street gangs was not limited to periods in which it  
16 was competing in a "ratings sweep," but instead was ongoing  
17 and, in my opinion, sincere." Here the -- with respect to the  
18 allegation that it was ongoing, I think we're only dealing  
19 with -- there's only one program mentioned here, June 1991,  
20 showing, and I don't believe this witness is competent to give  
21 an opinion to the station's sincerity. The fact that whether  
22 this programming took place inside or outside a ratings sweep  
23 is irrelevant.

24 JUDGE CHACHKIN: Overruled. Any other objection?

25 MR. SCHAUBLE: Yes, Your Honor, I go on to

1 paragraph 5. I object to it on the basis of relevance and  
2 competency. She's talking about programs she watched "on a  
3 regular basis" usually on weekend, weekend mornings. I think  
4 I would not that I believe the record reflects that during  
5 part of the time period she talks about, "Feedback," the  
6 program which she's mentioned here, was not being carried on  
7 the station.

8 JUDGE CHACHKIN: Is that true?

9 MR. EMMONS: I can -- I'd have to look at the --

10 JUDGE CHACHKIN: Well, let's, let's look. I mean,  
11 if it wasn't there on the station, I don't see how it could be  
12 relevant.

13 MR. SCHAUBLE: Your Honor, I -- pages 11 and 12 of  
14 Exhibit 33.

15 JUDGE CHACHKIN: Yes.

16 MR. SCHAUBLE: There was one showing of "Feedback"  
17 on June 7th, 1991, and then the program, and then the program  
18 was not carried on, on a weekly basis between March and July  
19 of 1991.

20 JUDGE CHACHKIN: Well --

21 MR. SCHAUBLE: And, also, Your Honor, there's no,  
22 there's no specific, no specific episodes mentioned here.

23 JUDGE CHACHKIN: I'm going to reject paragraph 5.  
24 The extent --

25 MR. EMMONS: Your Honor --

1 JUDGE CHACHKIN: The extent to which this program  
2 was carried and the extent to which the description of the  
3 program, the best evidence of that will be the documentary  
4 evidence provided by the station as to -- based on its review  
5 of program logs or whatever else were reviewed in determining  
6 what program was carried. I'm not going to rely on a viewer's  
7 listening habits.

8 MR. SCHAUBLE: Your Honor, Your Honor, I also object  
9 to paragraph 6 on the basis that talks generally and vaguely  
10 about the station's promoting civic events, and has, has  
11 sponsored -- and being "a sponsor of various community pro-  
12 jects and functions." To my knowledge, with respect, except  
13 for "His Hand Extended," "Prayer Partner Line," and these  
14 things in which the --

15 JUDGE CHACHKIN: I'm not going to receive para-  
16 graph 6. I have never seen a case where an attempt was made  
17 to establish what program was carried on the station by having  
18 presented by viewers who watch the program. Again, I repeat,  
19 the way it's done is by putting in the station's programming  
20 based on competent sources such as program logs and other  
21 records of the station.

22 MR. EMMONS: Right. Your, Your Honor, we do  
23 understand --

24 JUDGE CHACHKIN: That provides the best evidence of  
25 what program was carried at specific times by the station.



1 MR. EMMONS: I quite agree with that, Your Honor --

2 JUDGE CHACHKIN: Then I don't understand the purpose  
3 for trying to put this in through witnesses who might have  
4 viewed the station at a particular time.

5 MR. EMMONS: Well, we, we, we put it in for -- to  
6 show a basis for these witnesses' opinions about the merits of  
7 the station's programming. I, I understand your views on  
8 whether that's relevant or not, but that's why we did it. We  
9 did not put it in as best evidence of the, of the programming  
10 itself. You're quite right that that, the best evidence, will  
11 be in the, in the other exhibits that established through  
12 documentary evidence what the programs were and when they ran.

13 JUDGE CHACHKIN: All right, paragraph 6 has been  
14 rejected. TBF Exhibit 26 is received except as noted.

15 (Whereupon, the exhibit marked for  
16 identification as TBF Exhibit 26 was  
17 received into evidence.)

18 MR. EMMONS: Next, Your Honor, we offer TBF  
19 Exhibit 27, the declaration of Mary G. Washington.

20 JUDGE CHACHKIN: Any objections?

21 MR. SCHAUBLE: Your Honor, page 2, paragraph 5, the  
22 first sentence I object to on the basis that it's hearsay, and  
23 competence.

24 JUDGE CHACHKIN: Overruled. Any other objections?

25 MR. SCHAUBLE: No, Your Honor.

1 JUDGE CHACHKIN: TBF Exhibit 27 is received.

2 (Whereupon, the exhibit marked for  
3 identification as TBF Exhibit 27 was  
4 received into evidence.)

5 MR. EMMONS: We next offer TBF Exhibit 28, the  
6 declaration of Isaiah S. Williams, Jr.

7 JUDGE CHACHKIN: Any objections?

8 MR. SCHAUBLE: Yes, Your Honor, page 2, paragraph 5,  
9 which begins on page 2 and goes on to the first two lines on  
10 page 3. I object to the entire paragraph on the basis of  
11 relevancy; competence relating to the station; the witness's  
12 opinion of the, the characterization of the children's pro-  
13 gramming, and while the witness states that her daughter  
14 "watched a great deal of Channel 45 programming" there's no  
15 specific allegation here made that I see that, that the wit-  
16 ness actually viewed the programming.

17 JUDGE CHACHKIN: I'm not going to get to the quality  
18 of witnesses -- a viewers qualitative opinion of a particular  
19 program is not relevant. I'm not going to get to it. Para-  
20 graph 5 is rejected.

21 MR. SCHAUBLE: Your Honor, I object to --

22 JUDGE CHACHKIN: Paragraph 6 is also rejected, and  
23 so is paragraph 7.

24 MR. SCHAUBLE: Thank you, Your Honor. I object to  
25 the first sentence of paragraph 8 on, on the basis that's --

1 on the basis that it is conclusionary.

2 JUDGE CHACHKIN: Objection is overruled with the  
3 understanding that the first sentence, the conclusion refers  
4 to the succeeding sentences, and it's not -- and to that  
5 extent, it will be received.

6 MR. SCHAUBLE: Your Honor --

7 JUDGE CHACHKIN: Any other objections?

8 MR. SCHAUBLE: Yes, Your Honor, in the same para-  
9 graph, going on to page 4, beginning with the sentence, "Some  
10 people believe that Channel 45 has helped them in a direct and  
11 tangible way." From there to the end of the paragraph, again,  
12 this is subjective evidence which doesn't provide a basis for  
13 awarding renewal expectancy credit.

14 JUDGE CHACHKIN: The, the portions are rejected.  
15 Any other objections?

16 MR. SCHAUBLE: Yes, Your Honor, paragraph 9, again  
17 this doesn't, this doesn't relate to the witness's personal  
18 involvement with the station, so I object on the basis of  
19 competence.

20 JUDGE CHACHKIN: Paragraph 9 is rejected. Any other  
21 objection?

22 MR. SCHAUBLE: No, Your Honor.

23 JUDGE CHACHKIN: TBF Exhibit 28 is received except  
24 as noted.

25 (Whereupon, the exhibit marked for

1 identification as TBF Exhibit 28 was  
2 received into evidence.)

3 JUDGE CHACHKIN: Twenty-nine, any objections?

4 MR. SCHAUBLE: Yes, Your Honor, page 3, paragraph 6,  
5 I object to on the basis of relevance and competence, at least  
6 the first --

7 JUDGE CHACHKIN: There is not -- no specific facts  
8 on which it -- which any kind of evaluation can be made as to  
9 what programming is being provided by other stations. I  
10 assume, if you wanted to, we'll put in evidence of what other  
11 stations were carrying. You should have obtained such evi-  
12 dence from either the station's files or, or it's public  
13 files, or it's, or it's exhibit -- or it's material that's  
14 required to provide, put in those public files as to the needs  
15 which it's met. Paragraph 6 is rejected as incompetent.

16 MR. SCHAUBLE: Your Honor, I, I object to para-  
17 graph 7 on the basis of competence and relevance.

18 JUDGE CHACHKIN: Paragraph 7 is rejected. TBF  
19 Exhibit 29 is received except as noted.

20 (Whereupon, the exhibit marked for  
21 identification as TBF Exhibit 29 was  
22 received into evidence.)

23 JUDGE CHACHKIN: TBF Exhibit 30, any objections?

24 MR. SCHAUBLE: Yes, Your Honor, paragraph 6 I object  
25 to on the basis of relevance and competence. There doesn't --

1 again, this is not limited to the witness's personal involve-  
2 ment with the station. It is trying to draw a general conclu-  
3 sion without an adequate basis.

4 JUDGE CHACHKIN: The second sentence is received;  
5 the first sentence is rejected. Any other objections?

6 MR. SCHAUBLE: Your Honor, I --

7 JUDGE CHACHKIN: The remainder of the paragraph are  
8 rejected. Any other objections?

9 MR. SCHAUBLE: Your Honor, I object to paragraph 7  
10 on the basis that it's subject and immaterial evidence.

11 JUDGE CHACHKIN: Paragraph 7 is rejected; para-  
12 graph 8 is also rejected. TBF Exhibit 30 is received except  
13 as noted.

14 (Whereupon, the exhibit marked for  
15 identification as TBF Exhibit 30 was  
16 received into evidence.)

17 MR. SCHAUBLE: Your Honor, up -- we were moving very  
18 quickly there. I wonder if I could ask your indulgence. Back  
19 on TBF Exhibit 28, the declaration of -- excuse me, of, of --  
20 29, the declaration of Anne Wilson --

21 JUDGE CHACHKIN: Yes?

22 MR. EMMONS: -- Your Honor, if I understood you, you  
23 rejected all of paragraph 6, but I note that about the last  
24 half of paragraph 6 describes the witness's description of, of  
25 this station's help to her ministry. In other words, it's

1 based on her experience. That, that is not a comparison with  
2 other television stations. That sentence and perhaps -- and  
3 the next sentence, I think, are, are her perception of how the  
4 station helped her organization, and so I wonder if Your Honor  
5 would reconsider it to readmit those two sentences? That is  
6 to say the last two sentences of paragraph 6, understanding  
7 that the first two sentences are excluded.

8 MR. SCHAUBLE: Your Honor, I believe with respect to  
9 the last sentence of paragraph 6 I don't think it's clear  
10 whether the last sentence is referring to just her involvement  
11 or, or the station's programming in general.

12 JUDGE CHACHKIN: It doesn't indicate what the spe-  
13 cific program was and it doesn't indicate whether she appeared  
14 on this program. I don't know what it means when says it  
15 helped her ministry. Was she on this program, did she appear  
16 on this program?

17 MR. EMMONS: I think that that's what, what she's  
18 saying, Your Honor. In paragraph 5, she recites appearances  
19 on the program "Feedback," and also on the program "Praise the  
20 Lord -- South Florida," and describes the substance, the  
21 format of those programs, and --

22 JUDGE CHACHKIN: Well, doesn't -- isn't there enough  
23 information in that paragraph? I don't see -- it doesn't seem  
24 that paragraph 6 is talking about the same thing. It seems to  
25 me, paragraph 5 covers her appearances. I don't know what

1 paragraph 6 refers to. Paragraph 6 doesn't refer to programs  
2 that she appeared on, on other stations, so I don't know what  
3 it refers to. All right, I'm not going to change my ruling.  
4 All right, we've finished 1 through 30, and there's been no  
5 request to cross-examine any of these witnesses, so the next  
6 one is -- we -- I've already -- I believe the next material  
7 that we dealt with, is it not?

8 MR. EMMONS: That's correct, Your Honor.

9 JUDGE CHACHKIN: In the conference in which I  
10 rejected the exhibits?

11 MR. EMMONS: That's right, and, and all we've done  
12 here is to identify they were marked as TBF Exhibit --

13 JUDGE CHACHKIN: So why don't, why don't you do  
14 that? Why don't you identify the, the exhibits?

15 MR. EMMONS: It's TBF Exhibit 31 entitled "Declara-  
16 tion of Michael S. Everett-Ray, Videotaped Testimony," and the  
17 declaration itself consists of three pages including the  
18 signature page, and then the exhibit contains Tabs A through  
19 G, which are respectively the declaration of Linda M. Corbin;  
20 the declaration of Colby May; a videotape of the testimony in  
21 question, which is Tab C. Tab D is a video testimony format  
22 declarations from videotaped witnesses and transcripts of  
23 videotaped testimonies; Tab E is the declaration of Michael S.  
24 Everett-Ray, written in testimonial forms; Tab F is affidavit  
25 of translation and Spanish language written testimonial forms;

1 and Tab G is English language written testimonial forms.

2 JUDGE CHACHKIN: All right, the documents described  
3 by counsel are marked for identification as TBF Exhibit 31 and  
4 Tab A through G.

5 (Whereupon, the documents referred to  
6 as TBF Exhibit 31 and Tab A through G  
7 were marked for identification.)

8 JUDGE CHACHKIN: I had previously rejected these  
9 exhibits on the ground that this, this exceeds the number of  
10 public witness exhibits I would allow in evidence and various  
11 other grounds. My rulings are stated in the transcript of the  
12 conference and need not be repeated here. If anyone else has  
13 any further comments, they could make it at this time. All  
14 right, now we can proceed with the exhibits dealing with the,  
15 the issues added by the Commission.

16 MR. EMMONS: Oh, Your Honor, excuse me but there,  
17 there's further testimony of, of -- on the renewal expectancy.

18 JUDGE CHACHKIN: Oh, that's right, you have four  
19 exhibits on that.

20 MR. EMMONS: Yes, we have Exhibits 32 through 36.

21 JUDGE CHACHKIN: Thirty-two through thirty-six.

22 MR. EMMONS: Volume 1C.1 contains TBF Exhibit 32,  
23 the testimony of Michael S. Everett, which consists of 32 --  
24 excuse me, 32 pages of text including the signature page, and  
25 Tab A, which is the "His Hand Extended" monthly reports;



1 Tab B, entitled "Letters from Viewers"; Tab C, entitled "FCC  
2 Composite Week Public Notices"; and Tab D, entitled "WHFT-TV  
3 1987 Composite Week Logs." There is a second volume to  
4 Exhibit 32, which is Volume 1C.2, and that consists of Tabs E,  
5 F, G, and H to Exhibit 32; Tab E being the 1988 composite week  
6 logs; Tab F being the 1989 composite week logs; Tab G being  
7 the 1990 composite week logs; and Tab H being the 1991 com-  
8 posite week logs.

9 JUDGE CHACHKIN: All right, the documents described  
10 will be marked for identification as TBF Exhibit 32 and Tab A  
11 through H.

12 (Whereupon, the documents referred to  
13 as TBF Exhibit 32 and Tab A through H  
14 were marked for identification.)

15 MR. SCHAUBLE: Your Honor, can we go off the record  
16 for a minute?

17 JUDGE CHACHKIN: Yes, we'll go off the record.

18 (Whereupon, a brief recess was taken.)

19 JUDGE CHACHKIN: All right, let's go back on the  
20 record. Are there any objections to 32 and the various tabs?

21 MR. SCHAUBLE: Yes, Your Honor.

22 JUDGE CHACHKIN: All right, I'll find the material  
23 then. What, what's the objections?

24 MR. SCHAUBLE: The first one is on page 1, para-  
25 graph 2.

1 JUDGE CHACHKIN: Yes?

2 MR. SCHAUBLE: Fourth line down, "the station has  
3 devoted," and my objection is to the words "a great deal of"  
4 on the ground that that's a meaningless characterization which  
5 adds nothing to the record.

6 JUDGE CHACHKIN: All right --

7 MR. EMMONS: Well, Your Honor, can I be heard on  
8 that? I mean, it's not -- many recitations and decisions of  
9 the Commission on, on renewal expectancy evidence has accepted  
10 characterizations like that word "many," the word "numerous,"  
11 the word "considerable," "a flood of calls," "swamped with  
12 calls," "significantly increased," "a large number of." It  
13 seems to me that that's common language and common usage, and  
14 ought to be acceptable if it's -- it ought to be admissible,  
15 at least, which is all we're trying to do here.

16 MR. SCHAUBLE: Your Honor, it may be acceptable as a  
17 conclusion is based on the other evidence.

18 JUDGE CHACHKIN: That's all I'm -- when, when I  
19 accept it, it's only going to be on the understanding that the  
20 evidence will speak for itself. If the evidence doesn't  
21 indicate that, that a great deal of time and energy, then the  
22 categorization that a great deal of time and energy will be  
23 given no important.

24 MR. EMMONS: I understand.

25 JUDGE CHACHKIN: But I don't see any purpose in

1 making -- in ruling on matters of that which have no conse-  
2 quence. Any other objections?

3 MR. SCHAUBLE: Yes, Your Honor, the bottom of page  
4 1, the sentence, "The station, of course, has been  
5 involved --"

6 JUDGE CHACHKIN: What is it, the bottom of what?

7 MR. SCHAUBLE: Bottom of page 1. "The station, of  
8 course, has been involved in other community outreach activi-  
9 ties such as when our public affairs director, Janet McNair,  
10 invited the sixth grade from Star Shalom Hebrew Academy to  
11 tour the station and studios and watch a program being  
12 taped --"

13 JUDGE CHACHKIN: All right, what's the objection?

14 MR. SCHAUBLE: Okay, it's sort of a two-part --

15 COURT REPORTER: Excuse me. I have to change the  
16 tape.

17 (Whereupon, a brief recess was taken.)

18 (End of Tape 3; Start of Tape 4B.)

19 COURT REPORTER: Please begin.

20 MR. SCHAUBLE: Your Honor, my objection to the first  
21 half of the sentence on the page, this is -- if the -- if TBF  
22 was going to claim credit for other community outreach activi-  
23 ties, it then should be -- should have been specifically  
24 listed in its direct case exhibit and instead part of the  
25 sentence shouldn't remain in here, shouldn't have to allow

1 | them to make a general finding with no competent information  
2 | has been provided in that regard; and as to the second half of  
3 | the sentence concerning the visit, tour of the station stu-  
4 | dios, I object on the basis that there's no showing that this  
5 | is cognizable community involvement under the Commission's  
6 | standards.

7 | JUDGE CHACHKIN: Any response?

8 | MR. EMMONS: Your Honor, we're, we're not going to  
9 | make any argument that this reflects anything other than the,  
10 | the example that the, the witness cited in terms of the gener-  
11 | ality point that Mr. Schauble is making, so as far as I'm  
12 | concerned that's an, an insignificant point. On the second  
13 | point, there have been cases, I believe, where the Commission  
14 | has given credit to stations back during a license term have  
15 | had students come into, to the station to see how it works or  
16 | to watch programs being produced.

17 | JUDGE CHACHKIN: I'll overrule the objection. Any  
18 | other objections?

19 | MR. SCHAUBLE: Yes, Your Honor, my next is on page,  
20 | page 5, the -- I object to the last sentence of that  
21 | paragraph, which refers to the composite week information.

22 | JUDGE CHACHKIN: Where is this now?

23 | MR. SCHAUBLE: Paragraph 9, page 5 --

24 | JUDGE CHACHKIN: Yes.

25 | MR. SCHAUBLE: -- the last sentence, "For example,

1 such a spot would be that noted in the data of the station's  
2 composite week as defined below at Tab H. The spot for "His  
3 Hand Extended" was run during the local Miami "Praise the  
4 Lord" program on Friday, August 8th, 1991."

5 JUDGE CHACKIN: Okay, what's the basis of that  
6 objection?

7 MR. SCHAUBLE: Okay, the basis is, it's my belief,  
8 is that the program logs of composite weeks are not relevant  
9 to this proceeding under the Commission's current standards.  
10 The Commission no longer requires licensees to file  
11 composite-week information as part of their renewal or annual  
12 programming report information. That was eliminated when the  
13 Commission deregulated television. The program logs, if you  
14 look at the program logs that Trinity's offered, I submit that  
15 they do not contain any relevant information that is not  
16 available from other sources. What is contained is the name  
17 of the program, the time it ran, whether it was local or a  
18 network program, and Trinity's designation of what type of  
19 program it was. Now, for the issue-responsive programming,  
20 that information, I believe, is continued in the issues  
21 programs list, at Tab H and HH of Exhibit 33. I respectfully  
22 submit that the information with respect to the other program-  
23 ming is not relevant. With respect to the character, you  
24 know, a categorization of the programming, the 8th Court of  
25 Appeals and the Commission have made clear that the Commission

1 no longer, in fact, focuses on categories a program can be  
2 pigeon-holed into, but whether that program is issue respon-  
3 sive. The title of TBN's characterization of that program  
4 says nothing about whether the program was issue responsive.  
5 With respect to the deregulation of radio, the Commission  
6 held, and this is at 49R 2nd 124, specifying the date, the  
7 time, and the duration of programs, the log, and they're  
8 referring here to programming logs, yield little useful data  
9 of a public interest value of listing programs. Another  
10 problem with the programming log is that Trinity offers no  
11 definitions for program categories. When the Commission used  
12 to target week information, it had very specific definitions  
13 for each category. Here Trinity's logs contain categories  
14 such as public affairs/other, religious/public affairs, and  
15 these designations by themselves have no relevance. For  
16 example, the religious designation Trinity offers appears to  
17 include everything from "Joy Junction," a children's program,  
18 to "A Date with Dale," an interview program with entertainment  
19 celebrities, to a music video program, to what would more  
20 commonly be thought of as religious, religious preaching. The  
21 designations, thus, have no relevance to the Commission's  
22 renewal expectancy standards. Another problem here is that  
23 Mr. Everett, the sponsoring witness, apparently has some  
24 disagreement with the designations. If you go on to para-  
25 graph 24 of his testimony, he thinks he thought of "Feedback"

1 as a public affairs program other than public affairs/other.  
2 However, in looking at the, at the log, they actually list  
3 "Feedback" as religious/public affairs. The only finding that  
4 could be made based upon these designations is that somebody  
5 in TBN's programming department considers these to be the  
6 appropriate designations, and those by themselves have no  
7 relevance.

8 MR. EMMONS: Well, Your Honor, the, the -- that was  
9 a mouthful of objections, I guess, or points, but on the basic  
10 point that composite week analysis is not relevant, I think  
11 that's answered by the case log. The Metroplex license  
12 renewal case for WHYI in Fort Lauderdale, the Commission and  
13 the review board in the initial decision expressly took cogni-  
14 zance of the composite week analysis in assessing the  
15 licensees performance during their renewal term.

16 JUDGE CHACHKIN: That was at a time where the  
17 Commission still used logs.

18 MR. EMMONS: No, not it was not, Your Honor. This  
19 was a decision, initial decision released in 1989 covering a  
20 renewal period that was for a 1-year term in that case from  
21 1985 to 1986, which was after the Commission had discontinued  
22 the use of program logs, was after the Commission had discon-  
23 tinued the requirement of a, of a annual programming report  
24 that relied on the composite week, and was after the  
25 Commission discontinued any requirement that, for example, in

1 an assignment of license application, the assignor would be  
2 required to list a composite week analysis. So the Metroplex  
3 case occurred -- both the decision came down afterward and the  
4 license period at issue were after the, after the -- those  
5 requirements had long since been eliminated. That found in  
6 the Metroplex initial decision for FCC records at page 850,  
7 and the review board in that case affirmed that, that finding  
8 and the use of the composite week in the, in the quantitative  
9 analysis. The review board, also, in the Fox case, I believe,  
10 in paragraph 26 of its decision in that case, again, affirmed  
11 the relevance of a statistical breakdown as, at least, one  
12 relevant element of the composite week performance. That's  
13 found, as I said, at paragraph 26 of the review board decision  
14 in Fox, which --

15 JUDGE CHACHKIN: What statistical breakdown did  
16 it --

17 MR. EMMONS: I, I beg your pardon?

18 JUDGE CHACHKIN: What was the statistical breakdown?

19 MR. EMMONS: In, in Fox?

20 JUDGE CHACHKIN: Yes.

21 MR. EMMONS: That's not apparent from the review  
22 board decision, but it had to do with durations or times,  
23 durations of programs, and when they ran, how long they --  
24 what their duration was, what day of the week they ran, I  
25 think what time period, whether they were between 6 a.m. and



1 midnight, for example. I'm reading now from paragraph 17 of  
2 the review board decision in that case. It cited the fact  
3 that a number of public service announcements ran between the  
4 hours of 6 a.m. and midnight, and that during 1987 there were  
5 so many broadcasts during that period of time, and similar  
6 breakdowns for the period of January 1 through November 30,  
7 1988. So, statistical analysis in general appears still to be  
8 relevant to renewal expectancy. I've seen no Commission  
9 authority to the contrary.

10 MR. SCHAUBLE: Your Honor, may I speak to the  
11 Metroplex decision?

12 JUDGE CHACHKIN: Yes.

13 MR. SCHAUBLE: In that case, the composite week  
14 information came in through stipulation of the parties as, as  
15 part of a larger stipulation concerning other, other evidence  
16 and information.

17 MR. EMMONS: Well, that --

18 JUDGE CHACHKIN: Was there any attempt here to  
19 stipulate as to which program -- which composite week to use?

20 MR. EMMONS: Well, I think that there was a  
21 stipulation and the possibility of stipulation was discussed  
22 early in the process between the parties here, Your Honor, and  
23 then Glendale indicated that they didn't, did not wish to  
24 proceed by stipulation on that point because they would have  
25 an objection to the, to the relevance of, of that kind of